

REMARKS

Claims 1-3, 5-10, and 16 are pending. Claims 11-15 and 17-56 have been withdrawn from consideration by the Examiner. Despite Applicants' arguments presented on December 27, 2001, Claims 11-15 and 17-21, Groups II and III, respectively, were not rejoined with the elected claims. The refusal to rejoin the claims is traversed.

The claims of Group I are directed to a method that comprises the use of a bpV compound. The transitional phrase 'comprises' indicates that the treatment is not limited to the use of a single bpV compound, or a bpV compound alone. The claims of Groups II and III, dependent from Claim 1 of Group I, further limit the invention claimed therein by specifying administration route or claiming a combination of the bpV compound with an other compound. The further elements are conventional, thus the Group II and III claims only have novelty when claimed in combination with the features of the parent Group I claims.

The claims of Group I, II, and III share the same element or inventive concept, the use of a bpV compound. As noted above, the claims of Groups II and III could be held obvious in light of the claims of Group I. Pursuant to MPEP §803, "[i]f there is an express admission that the claimed inventions are obvious over each other within the meaning of 35 U.S.C. §103, restriction should not be required." Because the claims of Groups II and III are dependent on a claim of Group I for their inventive concept, restriction between the claims is improper and should be reconsidered. Rejoinder and consideration of Claims 11-15 and 17-21 are in order and are respectfully requested.

Independent Claim 1 and dependent Claims 4, 6-10, and 16 stand rejected under 35 U.S.C. §112, second paragraph, as indefinite. Claim 1 has been rewritten to include the limitation of Claim 4, and Claim 4 has been cancelled. It is believed that the current amendment to Claim 1 obviates this rejection. Support for the present amendment can be found in the specification at, *inter alia*, original Claim 4, page 6, line 7 and page 7, line 25. There is no new matter presented by this amendment. Withdrawal of the rejection and reconsideration of the claims are respectfully requested.

Claims 1, 4, 6-10, and 16 stand rejected under 35 U.S.C. §112, first paragraph, as nonenabled. It is believed that the current amendment to Claim 1 obviates this rejection. As amended, the Claims are directed to the inhibition of a viral infection in a patient, which comprises administering a therapeutically effective amount of a bpV compound to the patient. This administration can be effectuated based on the examples provided in the specification when read in light of the guidance at, *inter alia*, page 11 lines 8-18. It is known in the art to apply techniques perfected in cell or tissue culture on humans and other mammalian treatment subjects. Adequate dosage levels and treatment regimes can be determined without undue experimentation, the specification enables a skilled worker to practice the presently-claimed invention. Withdrawal of the rejection and reconsideration of the claims are respectfully requested.

Claims 1-3, 5, and 10 stand rejected under 35 U.S.C. §102(b) as anticipated by Oliver *et al.*, Modulation of Interferon-gamma-induced Macrophage Activation by Phosphotyrosine Phosphatases Inhibition, J. Biol. Chem., 273(22):13944-13949 (1998). This rejection was not applied to the novel

features of Claim 4. By the present amendment, the limitations of Claim 4 have been incorporated in independent Claim 1. Accordingly, independent Claim 1 and dependent Claims 2, 3, 5, and 10 are distinguishable over the Oliver *et al.* reference. The rejection should be withdrawn and the same is respectfully requested.

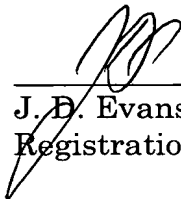
It is therefore submitted that pending Claims 1-3, 5-10, and 16 are in condition for allowance. Further, it is submitted that Claims 11-15 and 17-21 should be considered in conjunction with the aforementioned claims for the reasons detailed above. An action on the merits of Claims 1-3 and 5-21 is in order and is respectfully requested.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #2097/49123).

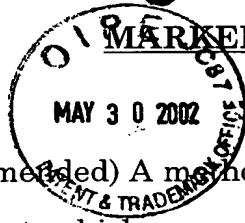
Respectfully submitted,

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MARKED-UP VERSION OF AMENDMENTS

1. (Amended) A method for the [treatment] inhibition of [an] a viral infection in a patient, which comprises administering to said patient a therapeutically effective amount of a bisperoxovanadium (bpV) compound.

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